

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter Of:

Implementation of Sections 3(n) and 332
of the Communications Act --

GN Docket No. 93-252

Regulatory Treatment of Mobile Services

Amendment of Part 90 of the Commission's
Rules To Facilitate Future Development
of SMR Systems in the 800 MHz Frequency
Band

PR Docket No. 93-144

Amendment of Parts 2 and 90 of the
Commission's Rules To Provide for the
Use of 200 Channels Outside the Designated
Filing Areas in the 896-901 MHz and 935-940
MHz Band Allotted to the Specialized Mobile
Radio Pool

PR Docket No. 89-553

**PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION
REPLY COMMENTS**

The Personal Communications Industry Association ("PCIA") herewith submits its
reply to comments and oppositions filed in response to petitions for reconsideration and
clarification of the Commission's Third Report and Order in the above-captioned docket.¹

¹ Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252 (rel. Sept. 23, 1994) ["Third R&O"]. PCIA and the National Association of Business and Educational Radio, Inc. ("NABER") recently announced the decision to merge their two organizations and to operate under the PCIA name as a new legal entity. This new PCIA is an international trade association created to represent the interest of both the commercial mobile radio service ("CMRS") and the private mobile radio service ("PMRS") communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System

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PCIA has already filed a petition for reconsideration and clarification, as well as comments on other petitions, in this docket. PCIA is filing this reply to respond to comments on its proposals and to extend its support to those parties requesting grandfathering of existing equipment under the station identification requirements.

Although the *Third R&O* succeeds at eliminating the great majority of competitive disparities between Part 22 and Part 90 licensees, as well as streamlining the regulation of mobile services overall, PCIA previously noted that there remain a few areas where reconsideration is appropriate and necessary:

First, PCIA argued that changes were necessary to conform the Part 22 rules governing pre-authorization operation with similar operational regulations in other parts of the Commission's Rules. In particular, PCIA urged the FCC to permit pre-authorization operation for stations where the facilities application has undergone review by an independent third party -- an engineering firm in the case of Part 22 licensees or a frequency coordinator in the case of Part 90 licensees. This request was supported by Paging Network, Inc., which provided extensive comment on both the legality of such a provision under the Communications Act and the public interest benefits supporting pre-authorization operation.²

¹(...continued)

Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² Paging Network, Inc. Petition for Reconsideration at 3-9 ["PageNet Petition"].

Accordingly, PCIA urges the FCC on reconsideration to adopt a blanket licensing scheme for all CMRS operators, whether premised upon BSTA authority or conditional authority.

Second, PCIA argued that the continued imposition of loading requirements on 900 MHz SMR services is contrary to the public interest and places such licensees on an uneven playing field versus other CMRS licensees. Consistent with the above views, PCIA and a number of other commenters have requested that the Commission treat the 900 MHz SMR service in a similar manner to other reclassified carrier services and eliminate the five year loading requirement.³

Third, PCIA raised the issue of conforming the forfeiture schedules for Part 22 and Part 90 licensees, suggesting that the forfeiture guidelines should account for the size of the carrier to avoid creating disparities in the treatment of carriers. PCIA recognizes that the Commission has adopted and will soon release the text of a Notice of Proposed Rulemaking on the forfeiture guidelines generally, but notes that this matter is also appropriate for consideration in this docket to ensure comparable treatment of similarly situated carriers. PCIA accordingly urges the Commission to conform the forfeiture guidelines for CMRS carriers uniformly to the levels currently defined for PMRS.

Fourth, in both this proceeding and in the related reconsideration proceedings on the Commission's Report and Order in CC Docket No. 92-115, PCIA argued that the Commission should not require the initiation of service to subscribers in determining whether a licensee has met the construction deadlines contained in an authorization. The requirement

³ American Mobile Telecommunications Association Petition for Reconsideration at 10-14 ["AMTA Petition"]; RAM Mobile Data USA Limited Partnership Petition for Reconsideration at 8-10 ["RAM Petition"]; Motorola Comments at 3.

of providing service to subscribers is, in some cases, difficult to administer, confusing for licensees, and unnecessary to ensure that facilities are available for service to the public. PCIA accordingly urges the Commission in the alternative to deem a licensee to have met this requirement if, as filers suggest,⁴ the licensee has constructed the authorized facilities and the facilities are interconnected to the public switched telephone network, and thus available for service.

Fifth, PCIA's prior filings noted that there are disparities in the regulations governing standby facilities that should be corrected. Specifically, PCIA suggested either adopting a rule based on Section 22.107 for reclassified Part 90 CMRS providers or by allowing both Part 22 and Part 90 licensees to construct standby facilities without a separate authorization. There are clear public interest benefits to permitting flexible use of standby facilities, regardless of the regulatory approach.

Sixth, PCIA suggested that the FCC should add to the flexibility of CMRS providers, as it has done in the narrowband PCS context, by altering the emission mask in cases where the same entity operates two or more adjacent channels. PCIA urges the Commission to rectify this disparity upon reconsideration by explicitly clarifying that paging licensees, in addition to cellular, PCS, and MTA-based SMR licensees, are required to adhere to emission

⁴ Ameritech Mobile Services, Inc. Petition for Reconsideration at 18, CC Docket No. 92-115 (filed Dec. 12, 1994); Massachusetts-Connecticut Mobile Telephone Company, Mobile Radio Communications, Inc., and Radiofone, Inc. Petition for Reconsideration at 10, CC Docket No. 92-115 (filed Dec. 12, 1994); McCaw Cellular Communications, Inc. Petition for Reconsideration at 12-16, CC Docket No. 92-115 (filed Dec. 12, 1994); Paging Network, Inc. Petition for Reconsideration at 11-12, CC Docket No. 92-115 (filed Dec. 12, 1994); Airtouch Communications, Inc. and U S West NewVector Group, Inc. Comments at 6-7, CC Docket No. 92-115 (filed Jan. 20, 1994).

mask limits only to the extent necessary to protect operations outside of their authorized spectrum.

Seventh, PCIA supported modifications to the Commission's regulations for 900 MHz SMRS to: (1) protect the 900 MHz operations of carriers that *applied for* authorizations by August 10, 1994, regardless of when such authority is actually granted; (2) continue to accept and process new requests for 900 MHz SMR secondary sites outside of "Protected Areas," with the recognition that such sites will not be granted protected status; and, (3) interpret "existing service area" for purposes of co-channel interference protection to extend to the boundary of the 900 MHz SMR designated filing areas ("DFAs"). PCIA notes that, one day after the filing of its petition, the FCC released a Memorandum Opinion and Order on its own motion that affirmatively provides the relief requested for the second of these points. PCIA and numerous other filers, however, continue to believe that affirmative action on the remaining points is warranted and justified by the record.⁵

Eighth, PCIA requested the Commission, upon reconsideration, to clarify the effective date of the changed regulations in light of the grandfathering provisions. As noted by other commenters, there is substantial confusion as to the applicable date of many regulations for Part 90 licensees.⁶ Therefore, PCIA respectfully urges the Commission to clearly specify which rule sections (and portions of rule sections) will take effect immediately and which rule sections take effect at the end of the grandfather period.

⁵ AMTA Petition at 6; Geotek Communications, Inc. Petition for Reconsideration at 3-12; RAM Petition at 6-7; Motorola Comments at 2.

⁶ AMTA Petition at 26; Motorola Comments at 5.

Ninth, PCIA urged the Commission to further modify implementation of the new FCC Form 600. As McCaw Cellular Communications, Inc. notes, there are still substantial problems with the form itself.⁷ PCIA also believes that modification of the FCC's Form 600 implementation plan by eliminating the requirement to supplement the Form 574 on an interim basis would significantly reduce industry confusion and ensure a much smoother transition to the new form.

Tenth, PCIA suggested codifying the renewal expectancy for all CMRS licensees. This suggestion was supported by, or echoed in, the filings of a number of industry participants.⁸ Accordingly, PCIA suggests recasting Section 22.145, titled "Renewal Application Procedures," by retitling the section "Renewal Applications," placing the existing text under a subsection (a), and including language similar to Section 24.16 under a new subsection (b).

Finally, PCIA also concurs with those commenters that request modification of the station identification timing requirements.⁹ Under the new regulations, licensees are required to transmit a station identification within five minutes of the hour, every hour. As the commenters in this proceeding have noted, however, compliance with this new requirement is technically impracticable for some existing equipment in that the identification cannot be synchronized with an external clock. To avoid requiring the unnecessary

⁷ McCaw Petition at 4-8.

⁸ AMTA Petition at 24-25; PageNet Petition at 10.

⁹ AMTA Petition at 16-17; Airtouch Communications, Inc. and U S West NewVector Group, Inc. Comments at 20, CC Docket No. 92-115 (filed Jan. 20, 1995).

imposition of significant upgrade costs on licensees, PCIA urges the Commission to grandfather existing equipment and allow such stations to transmit a station identification at least every half hour, as is now required by Section 22.213.

PCIA has recommended a number of limited changes to provide a more competitive wireless marketplace and allow mobile service providers to be more responsive to their customers' needs and demands. These proposals have been strongly supported in other petitions for reconsideration and in the associated comments. PCIA urges the Commission to adopt these limited changes upon reconsideration in this docket.

Respectfully submitted,

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Dated: January 30, 1995

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I hereby certify that on this 30th day of January, 1995, I caused copies of the foregoing "Reply Comments" to be mailed via first-class postage prepaid mail to the following:

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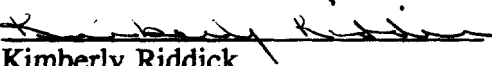
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